

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

In re:

Chapter 11 Case  
Case No. 8:03-bk-20980-ALP

PETRACOM OF JOPLIN, LLC

Debtor. /

**ORDER ON MOTION FOR ORDER  
FOR PAYMENT OF ADMINISTRATIVE  
EXPENSE AND MOTION FOR SUMMARY  
JUDGMENT  
(Doc. Nos. 88 & 205)**

The matter under consideration in this yet-to-be confirmed Chapter 11 case of Petracom of Joplin, LLC (Debtor) is (1) a Motion for Order for Payment of Administrative Expense (Doc. No. 88), filed by Lund Consultants, Inc. (Lund) and (2) a Motion for Summary Judgment in Connection with the Motion (Doc. No. 205), filed by Petracom of Joplin, LLC (Debtor). This Court has considered the Motions, together with the argument advanced by the respective parties at the hearing to consider the same, and now finds as follows.

Prior to the Debtor filing for Chapter 11 relief, on March 6, 2002, the Debtor and Lund entered into a Radio Consulting Agreement (Agreement). Pursuant to the Agreement, Lund agreed to provide consulting services to various radio stations owned by the Debtor. In return, the Debtor agreed to pay Lund for the fees related to this service, which were in the total amount of \$48,000, payable in monthly installments of \$2,000. The consulting services included promotional lines, marketing and sales strategies, program formats, and on-the-air one liners. It is without dispute that Lund provided services to the Debtor prior to and following the Debtor's Chapter 11 filing.

On October 9, 2003, the Debtor filed for Chapter 11 relief. Thereafter, on December 29, 2003, the Debtor filed its Motion to Reject Radio Consulting Agreement with Lund (Doc. No. 56). Following a hearing to consider the Motion to Reject, on February 11, 2004, this Court entered an Order granting the Motion (Doc. No. 69). The Agreement was rejected by the Debtor.

Thereafter, on March 10, 2004, Lund filed the instant Motion for Order for Payment of Administrative Expense (Doc. No. 88), seeking the entry of an Order by this Court awarding Lund an administrative expense in the amount of \$9,104. The basis of the Motion is sought pursuant to 11 U.S.C. § 502(g) for the rejection of the executory contract and pursuant to 11 U.S.C. § 503(b)(3) as an administrative expense for preserving and protecting the estate.

In the Motion for Summary Judgment (Doc. No. 205), filed by the Debtor, the Debtor asserts that there were no services that were "actual, necessary expenses" incurred by Lund or that provided a benefit to the Debtor post-petition. The Debtor asserts that the post-petition activity was limited to generic broadcast emails and newsletters and was of no direct benefit to the Debtor. The Motion is supported by the Affidavit of Joseph Fry, who is the vice president and CFO of the Debtor. He states in ¶ 5 of the Affidavit that "no services were provided by Lund Consultants, Inc. postpetition to the Debtors that were of benefit to the Debtors or their estates."

In opposition and in support of Lund's Motion for Administrative Expense, Lund filed the Affidavit of John Lund (Doc. No. 216), who is the owner of Lund. Attached to his Affidavit is a breakdown by days of the services that he provided to the Debtor. These services included writing liners and promos for the various radio stations; writing promos for weekend promotions; updating certain musical libraries; and providing other services.

Based upon the forgoing undisputed facts, as well as the case law governing administrative expense claims, this Court is satisfied that the Motion for Summary Judgment should be denied and the Motion for Payment of Administrative Expense should be granted. This Court is satisfied that Mr. Lund provided post-petition services that did benefit the Debtor, including the promos for the various weekend promotions besides the general updates.

Accordingly, it is

**ORDERED, ADJUDGED AND DECREED** that a Motion for Order for Payment of Administrative Expense (Doc. No.88) be, and the same is hereby, granted. It is further

**ORDERED, ADJUDGED AND DECREED** that the Motion for Summary Judgment in Connection with Administrative Expense Claim filed

by Lund Consultants, Inc. (Doc. No. 205) be, and the same is hereby, denied. It is further

ORDERED, ADJUDGED AND DECREED that Lund Consultants, Inc. be, and the same is hereby, entitled to an administrative expense claim in the amount of \$9,104.

DONE AND ORDERED at Tampa, Florida, on 10/28/04.

/s/ Alexander L. Paskay  
ALEXANDER L. PASKAY  
United States Bankruptcy Judge